

(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: MAY 23 2013 OFFICE: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:  
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a software development and computer consulting company. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(2).<sup>1</sup> As required by statute, the petition is submitted along with an approved Form ETA 750 labor certification. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education required by the terms of the labor certification.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

On March 5, 2013, the AAO sent the petitioner a Request for Evidence (RFE), requesting information concerning the beneficiary's education as well as evidence of the petitioner's ability to pay the proffered wage from the priority date onwards. This office allowed the petitioner 60 days in which to respond to the RFE. More than 60 days have passed and the petitioner has failed to respond to this office's request for evidence that the beneficiary has the education required by the terms of the labor certification and that the petitioner has the ability to pay the proffered wage from the priority date onwards. Thus, the appeal will be dismissed as abandoned.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed as moot.

---

<sup>1</sup> In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*